

## REMARKS

Claims 1-19 and 21 are currently pending. Claims 1, 11-15, and 19 are amended herein. Support for the amendments can be found in the application and claims as originally filed, for example paragraphs [0047]-[0048] of the specification as published. No new matter is added. Each of the Office Action's rejections is addressed below.

### **Rejections under 35 U.S.C. § 102**

Anticipation under Section 102 can be found only if a reference shows exactly what is claimed. *Titanium Metals Corp. v. Banner*, 778 F.2d 775 (Fed. Cir. 1985). More particularly, a finding of anticipation requires the disclosure in a single piece of prior art of each and every limitation of a claimed invention. *Electro Med. Sys. S.A. v. Cooper Life Sciences*, 34 F.3d 1048, 1052 (Fed. Cir. 1994).

#### **Invernizzi fails to anticipate Claims 1-9, 11, 16-19, and 21**

Claims 1-9, 11, 16-19, and 21 stand rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 4,194,011 to Invernizzi (hereinafter "Invernizzi").

The main feature of the Invernizzi process is thermal pasteurization or sterilization of the starting material, followed by fermentation in hermetic containers. Invernizzi discloses "that a thermal pasteurisation treatment which basically destroys all the vegetative living forms, except for the sporulated forms, is sufficient for the production according to the invention of fresh lactic paste cheeses, i.e. cheeses with a low pH (4.6 to 4.7)." Col. 3, ll. 48-57. Invernizzi further discloses that "[t]he fermentation agent is of course introduced as quickly as possible, preferably just before packaging" (Col. 4, ll. 9-11) and that "[i]n combination with these strains, it is also possible to add a food-grade acid, such as hydrochloric acid, or an enzymatic system, such as rennet, during packaging under heat." Col. 4, ll. 20-24. The use of a food grade acid is optional. See col. 4, ll. 20-24. As found by the Examiner "Invernizzi carries out the acidification by fermenting the cooked product with lactic acid bacteria, which produce lactic acid, thereby altering the pH." Office Action, page 6. Thus, Invernizzi inherently discloses that the pH alteration occurs *during* the fermentation step *inside* the hermetically sealed packaging.

The recited methods provide advantages because they produce products with improved texture and do not require fermentation. Claim 1 is amended herein to recite “(d) reducing the pH of the cooked product to a pH in the range of 4.5-7.5 by addition of an acid or acidulant; (e) processing and/or packing the pH 4.5-7.5 product to form the final product.” Invernizzi fails to disclose “reducing the pH of the cooked product to a pH in the range of 4.5-7.5 by **addition of an acid or acidulant**” and subsequently “processing and/or packing the pH 4.5-7.5 product to form the final product” as claimed in Claim 1 as amended herein. Invernizzi only discloses reducing pH in the packaging. Here, the product is only packaged after pH reduction. Further, fermenting in the package is a key part of Invernizzi. Accordingly, Applicants respectfully request withdrawal of the rejection of Claim 1 and its dependents.

Claim 19 is amended herein to recite in part “(d) reducing the pH of the cooked product to a pH in the range 4.5-7.5 by addition of an acid or acidulant while liquid; (e) placing the pH 4.5-7.5 product into packaging while still liquid”. Invernizzi also fails to disclose this feature for the reasons discussed above. Accordingly, Applicants respectfully request withdrawal of this rejection.

Further, these differences are more than obvious variations of Invernizzi because Invernizzi has different process concerns. For example, Invernizzi focuses on fermenting a cheese product for 6 to 48 hours *in* a hermetically sealed package. Further, Invernizzi provides no reason to reduce the pH of the cooked product prior to its fermentation step or benefit from doing so.

**Bodor fails to anticipate Claims 1-4, 11, 16-19, and 21**

Claims 1-4, 16-19, and 21 stand rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 6,217,917 to Bodor (hereinafter “Bodor”).

The Examiner found that “[t]he addition of pH 6.5 cream to the pH 5 acidified dairy will result in a cooked product with a pH between 4.5-7.5.” Thus, the addition of cream having a pH of 6.5 to the acidified dairy with a pH of 5.0 will **increase** the pH of the acidified dairy.

Claim 1 is amended herein to recite in part “(d) reducing the pH of the cooked product to a pH in the range of 4.5-7.5 by addition of an acid or acidulant” and Claim 19 is amended herein to recite in part “(d) reducing the pH of the cooked product to a pH in the range 4.5-7.5 by

**Application No.:** 10/563,314  
**Filing Date:** August 1, 2006

addition of an acid or acidulant while liquid”. Bodor fails to disclose *reducing* the pH of the cooked product as recited in Claims 1 and 19 as amended herein. Further, heat treatment in Bodor is to stop a fermentation. Accordingly, Applicants respectfully request withdrawal of the rejection of Claims 1 and 19 and their dependents.

With regards to whey removal, Applicants note that Bodor discloses “Optionally whey is removed, preferably by ultrafiltration (UF) or centrifuging in a separator.” Applicants note that Bodor discloses acid coagulation (col. 3, ll. 25-31) and acid coagulation followed by whey separation (col. 3, ll. 34-40). Further, Bodor discloses that “In the case of production of fresh cheese, generally whey is removed after coagulation and subsequent to, during, or before whey removal, a heating and or homogenization step may be included”. Col. 1, ll. 45-48. Bodor fails to disclose any examples of processes where the whey is not removed. Thus, Applicants submit that there is no disclosure of a process where whey is not removed in combination with a reduction in pH.

Further, these differences are more than obvious variations of Bodor because Bodor has different process concerns. For example, Bodor is concerned with the use of specific exopolysaccharide producing lactic acid bacteria for fermentation with heat treated dairy spreads to form non-grainy or non-sandy cheese spread products. *See* col. 3, ll. 15-19.

Further, there is no reason to modify the process of Bodor to reduce the pH by addition of an acid or acidulant. Bodor only discloses adding cream to increasing the pH of the acidified dairy by adding cream and the use of specific exopolysaccharide producing lactic acid bacteria for fermentation. Applicants respectfully request withdrawal of this rejection for at least this reason.

#### **Rejections under 35 U.S.C. § 103(a)**

It is well settled that the Examiner “bears the initial burden of presenting a *prima facie* case of unpatentability...” *In re Sullivan*, 498 F.3d 1345 (Fed. Cir. 2007). Until the Examiner has established a *prima facie* case of obviousness, the Applicant need not present arguments or evidence of non-obviousness. To establish a *prima facie* case of obviousness, the Examiner must establish at least three elements. First, the prior art reference (or references when combined) must teach or suggest all of the claim limitations: “All words in a claim must be considered in

judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 165 U.S.P.Q. 494, 496 (CCPA 1970); *see also M.P.E.P. § 2143.03*. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986); *Pharmastem Therapeutics v. Viacell, Inc.*, 491 F.3d 1342, 83 U.S.P.Q.2d 1289 (Fed. Cir. 2007); *see also M.P.E.P. § 2143.02*. And finally, the Examiner must articulate some reason to modify or combine the cited references that renders the claim obvious. Merely establishing that the claimed elements can be found in the prior art is not sufficient to establish a *prima facie* case of obviousness. Each of the combinations asserted by the Examiner is addressed below.

**The Examiner’s Proposed Modification of Invernizzi Fails To Make Claims 10 and 12-15 Obvious**

Claims 10 and 12-15 stand rejected under 35 U.S.C. § 103(a) as obvious over Invernizzi. Applicants respectfully traverse the present rejection.

As discussed above, Invernizzi fails to disclose the features of Claim 1. The Examiner’s proposed modification to Invernizzi fails to make up for this deficiency. Accordingly, Applicants respectfully request withdrawal of the rejection of Claims 10 and 12-15, which depend from Claim 1, for at least this reason.

**The Proposed Modification of Bodor Fails To Make Claims 6-7 and 11-13 Obvious**

Claims 6-7 and 11-13 stand rejected under 35 U.S.C. § 103(a) as obvious over Bodor. Applicants respectfully traverse the present rejection.

First, as discussed above, Bodor fails to disclose the features of Claim 1. The Examiner’s proposed modification to Bodor fails to make up for this deficiency. Accordingly, Applicants respectfully request withdrawal of the rejection of Claims 6-7 and 11-13, which depend from Claim 1, for at least this reason.

Second, there is no reasonable expectation of success to improve the texture of the product by reducing the pH of the cooked product to a pH in the range 4.5-7.5 by addition of an acid or acidulant while liquid as claimed in Claim 1. Bodor only discloses the improving the

**Application No.: 10/563,314**  
**Filing Date: August 1, 2006**

texture of a cheese spread by fermenting with a specific exopolysaccharide producing lactic acid bacteria. Applicants respectfully request withdrawal of this rejection for at least this reason.

*No Disclaimers or Disavowals*


Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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